(1) Supreme Court, U.S.
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IN THE

Supreme Court of the United States

NATIONAL ASSOCIATION OF FOR THE ADVANCEMENT MULTIJURISDICTION PRACTICE (NAAMJP) ET. AL., PETITIONER

v.

ALBERTO R. GONZALES, ANTHONY J. SCIRICA, CHIEF JUDGE OF THE THIRD CIRCUIT JUDICIAL COUNCIL ET. AL.

PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION, ALTERNATIVELY A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF MANDAMUS AND PROHIBITION, ALTERNATIVELY A PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Congress in 1988 enacted law that declares federal district court local rules "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. 2072(b). Congress concurrently in 1988 enacted 28 U.S.C. 332(d)(4), and placed on each respondent United States Judicial Council, a mandatory periodic continuing duty to review and abrogate any federal district "local" court rules that were not consistent under the strictest scrutiny standard of review found in the law, as set forth in 28 U.S.C. 2072(b). The question presented is whether a United States District Court may require that applicants for general admission to its bar be licensed in the State where that court sits.

2. The Fifth Amendment principle of due process counsels no man shall be a judge in his own case. A judge shall disqualify himself where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b). Can due process be obtained by the petitioners in any Court, other than this Supreme Court, because this is the only Court that is not a named defendant, and does not have a personal bias or prejudice concerning a party, or a proprietary interest in the validity of the challenged local rules?

PARTIES TO THE PROCEEDING

Plaintiffs/Petitioners

National Association for the Advancement of Multijurisdiction Practice,(NAAMJP)
John F. O'Rourke, Alan Ellis, Donald Harris.

Defendants/Respondents

Alberto R. Gonzales, United States Department of Justice.

Anthony J. Scirica, Chief Judge of the Third Circuit Judicial Council, Dolores K. Sloviter, Jane R. Roth, Theodore A. McKee, Marjorie O. Rendell, James T. Giles, Thomas Vaniske, Sue L. Robinson, Doretta W. Ambrose, Garrett Brown Jr., members of the Third Circuit Judicial Council.

Douglas B. Ginsburg, Chief Judge of the District of Columbia Judicial Council, David B. Sentelle, Karen Lecraft Henderson, A. Raymond Randolph, Judith W. Rogers, David S. Tatel, Merrick B.Garland, Thomas F. Hogan, Emmet G. Sullivan, James Robertson, Richard W. Roberts, Ellen Segal Huvelle, Reggie B. Walton, members of the District of Columbia Judicial Council.

Hon. Mary M. Schroeder, Chief Judge of the Ninth Circuit Judicial Council, Arthur Alarcon, Alex Kozinski, Kim McLane Wardlaw, Marsha Berzon, Andrew J. Kleinfeld, B. Lynn Winmill, Stephen M. McNamee, Terry J. Hatter, Charles R. Breyer, Roger G. Strand, members of the Ninth Circuit Judicial Council.

Hon. John W. Bissell, Chief Judge for the United States District Court for the District of New Jersey, Dennis M. Cavanaugh, Joseph A. Greenway, Jr., Katharine S. Hayden, Faith S.

Hochberg, Jose L. Linares, William J. Martini, Joel A. Pisano, Alfred M. Wolfin, judges on the Court.

Hon. Consuelo B. Marshall, Chief Judge of the United States District Court for the Central District of California, Percy Anderson, Terry J. Hatter, Jr., Ronald S.W. Lew, Nora M. Manella, Howard A. Matz, James S. Otero, Dean D. Pregerson, George P. Schiavelli, Christina A. Snyder, John F. Walter, judges on the Court.

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OPINIONS BELOW

The Order entered by Senior District Judge Thomas N. O'Neill, Jr. of the Eastern District of Pennsylvania denying Petitioners' Motion for Permanent Injunction and Declaratory Judgment was entered on March 23, 2006. This Order is not published, and it is set forth in the Appendix. An appeal was timely filed to United States Court of Appeals for the Third Circuit on April 19, 2006, docket 06-2420.

JURISDICTION

This Court has supervisory responsibility over federal "local" district court rules. Frazier v. Heebe, Chief Judge of the Eastern District of Louisiana, 482 U.S. 641, 645 (1987). Writ jurisdiction in this Court is authorized by 28 U.S.C. § 1651. This Petition for Mandamus and Prohibition is filed under Supreme Court Rule 20.

Alternatively, petitioners request this Court to grant certiorari to the United States Court of Appeals for the Third Circuit under Supreme Court Rule 11 because, as previously noted, "no man can be a judge in his own case," and judges on that Court are named defendants. See 28 U.S.C. § 455.

NOTIFICATION REQUIRED BY RULE 29.4

Service of process on defense counsel and the solicitor general is made.

RELEVANT PROVISIONS INVOLVED

(see appendix)

STATEMENT

Procedural History

Petitioners were in a Catch-22 because they wanted to challenge the attorney general admission local rules of the Eastern District of Pennsylvania, and elsewhere, without naming judges of those Courts as defendants. Petitioners in the initial Complaint, and subsequently in correspondence, requested from government defense counsel, the right to challenge all of the inconsistent local rules, without expressly naming as defendants the judges across our Union responsible for adopting and supervising the challenged rules. Petitioners sought this stipulation in order to avoid the waste of judicial resources. Petitioners in the complaint did not name any member of any Judicial Council as a defendant. The Assistant United States attorney defense counsel refused to enter any stipulation.

Petitioners were thus compelled because of a government refusal to cooperate to file a First Amended Class Action Complaint adding as named defendants the members of the Circuit Judicial Councils. These defendants were added because petitioners seek in the interests of judicial economy a decision that abrogates all of the challenged inconsistent general admission "local" rules across our Union. Petitioners allege these inconsistent general admission local rules on their face and as applied, constitute an overbroad prior restraint on sacred First Amendment rights, and violate the statutory standard of review set forth in 28 U.S.C. § 2072(b)("Such rules shall not abridge, enlarge or modify any substantive right.")

Petitioners filed a Motion for Preliminary and Permanent Injunction and Declaratory Judgment. Petitioners filed 25 exhibits in support of the requested relief. Defense counsel did not proffer any objection to the evidence. Petitioners were denied the right to conduct discovery.